

APPROVED MINUTES*
SUNNYVALE CITY COUNCIL
TUESDAY, DECEMBER 15, 2009

6 P.M. SPECIAL COUNCIL MEETING (Closed Session)

Closed Session pursuant to Government Code Section 54956.9(a)

Conference With Legal Counsel – Existing Litigation

Sunnyvale West Neighborhood Association, et al. vs. City of Sunnyvale City Council, Santa Clara County Superior Court Case No.108-CV-127528

7 P.M. COUNCIL MEETING

CALL TO ORDER - Call to order in the Council Chambers

SALUTE TO THE FLAG

Mayor Spitaleri led the salute to the flag.

ROLL CALL

PRESENT:

Mayor Anthony Spitaleri
Vice Mayor Christopher Moylan
Councilmember John Howe
Councilmember Ron Swegles
Councilmember Melinda Hamilton
Councilmember David Whittum
Councilmember Dean Chu

ABSENT:

None

STAFF PRESENT:

City Manager Gary Luebbers
Assistant City Manager Robert Walker
City Attorney David Kahn
Director of Community Development Hanson Hom
Director of Public Safety Don Johnson
Director of Community Services David Lewis
Director of Public Works Marvin Rose
Director of Finance Mary Bradley
City Clerk Kathleen Franco Simmons

CLOSED SESSION REPORT FOR DECEMBER 15, 2009

Vice Mayor Moylan reported Council met in Closed Session pursuant to Government Code Section 54956.9(a) - Conference With Legal Counsel – Existing Litigation.

Vice Mayor Moylan reported Council gave direction and took action.

SPECIAL ORDER OF THE DAY

City Manager Gary Luebbbers presented a video about *Sunnyvale, the Happiest Town in America* which featured local business owner Julia Blom. Mayor Spitaleri presented a proclamation to Julia Blom as the Honorary Ambassador of Sunnyvale

Mayor Spitaleri presented the American Red Cross with a proclamation designating January 2010 as "National Blood Donor Month."

PUBLIC ANNOUNCEMENTS

Fred Fowler extended appreciation to all participants of the Annual Lakewood Holiday Parade for this year's successful event.

Councilmember Howe extended appreciation to the Lakewood Homeowners Association Board for a wonderful event.

Fowler announced the upcoming Annual Holiday Lighting contest in the Lakewood subdivision.

CONSENT CALENDAR

MOTION: Vice Mayor Moylan moved and Councilmember Swegles seconded to approve the Consent Calendar.

VOTE: 7-0

- 1.A. Approval of Council Meeting Minutes of November 24, 2009**
- 1.B. Approval of Council Meeting Minutes of December 1, 2009**
- 1.C. Approval of Council Meeting Minutes of December 8, 2009**
- 1.D. Approval of Information/Action Items – Council Directions to Staff**

Fiscal Items

- 1.E. RTC 09-306 List of Claims and Bills Approved for Payment by the City Manager – List No. 483**

Staff Recommendation: Review the attached lists of bills.

**1.F. RESOLUTION FY 2008/2009 Annual Status Report on Receipt and Use of
RTC 09-311 Development Impact Fees and Adoption of Resolution Approving
Findings Regarding Unspent Transportation Impact Fees**

Staff Recommendation: Staff recommends Alternative 1, to accept the FY 2008/2009 Status Report on the Receipt and Use of Development Impact Fees and adopt the Resolution to approve the required findings on Transportation Impact Fees.

Contracts

**1.G. RTC 09-307 Award of Contract to Conduct a Waste Characterization Study for
the Cities of Sunnyvale and Mountain View (F0908-16)**

Staff Recommendation: Award a contract in an amount not to exceed \$121,910, including applicable taxes, to Cascadia Consulting Group to conduct a waste characterization study for the cities of Sunnyvale and Mountain View.

**1.H. RTC 09-310 Award of Contract for the Cooperative Purchase of Industrial and
Commercial Supplies (F0912-51)**

Staff Recommendation: Award a one-year contract, not to exceed budgeted amounts, to Grainger for citywide industrial and commercial supplies, based upon the State of California Western State Contracting Alliance (WSCA) cooperative contract; and authorize the City Manager to exercise an option to extend the contract for an additional one-year period, provided that pricing and service remain acceptable to the City.

**1.I. RTC 09-308 Authorization to Modify and Existing Contract for Traffic Signal
Work (F0912-47)**

Staff Recommendation: Modify an existing contract with Team Econolite by increasing the total not to exceed value of the contract by \$157,121, to a total of \$257,121.

**1.J. RTC 09-309 Authorization to Modify an Existing Contract for Design Services
Relating to the Hamilton Plant Mechanical and Electrical
Reconstruction (F0912-49)**

Staff Recommendation: Modify an existing contract with Lee & Ro, Inc. by increasing the total not to exceed value of the contract by \$16,700, making the new total value of the contract \$116,680.

Contracts: Sunnyvale Works!

**1.K. RTC 09-313 Award of Sunnyvale Works! Bid No. F0911-39 for Accessibility
Improvements-Ramps 2010**

Staff Recommendation: Award a contract in the amount of \$312,600, to Bugler Construction, Inc., for the subject project, and authorize the City Manager to execute the contract when all necessary conditions have been met and approve a project contingency in the amount of \$31,260.

STAFF RESPONSES TO PRIOR PUBLIC COMMENTS

None.

PUBLIC COMMENTS

None.

PUBLIC HEARINGS/GENERAL BUSINESS

2. RTC 09-304 2009-0076 Commercial Vehicle Parking in Residential Zones (Study Issue)

Community Development Director Hanson Hom provided the staff report.

Councilmember Whittum confirmed with Director Hom that staff looked at the option of restricting commercial signage on commercial vehicles in residential districts; however, the concern is over first amendment rights.

Councilmember Whittum stated he is aware that the City of Santa Clara has an ordinance restricting commercial signage on commercial vehicles. City Attorney David Kahn responded that in reviewing this issue, his staff found issues between passing such an ordinance and first amendment rights. City Attorney Kahn stated he would speak to the city attorney in Santa Clara and report back to Council.

Councilmember Swegles verified with Director Hom that the study issue focused on vehicles under 10,000 pounds because there are existing restrictions for vehicles 10,000 pounds and above. Currently, vehicles under 10,000 pounds are not regulated.

Councilmember Swegles questioned whether this regulation would restrict large recreational vehicles, over 10,000 pounds, from parking in certain areas. Director Hom responded the restriction on parking would be for commercial vehicles as defined by the state vehicle code. Adding this restriction would not be a change as there are restrictions on commercial vehicles; adding this restriction would assist in making it clear as to what state law defines as a commercial vehicle.

Director of Public Safety Don Johnson added staff does not enforce ordinance actions on vehicles at the 7,500 pound limit. Director Johnson stated an example of a 10,000 pound vehicle could be a large truck.

Public hearing opened at 7:32 p.m.

Carole Wiess stated the staff report does not speak to the matter of improving neighborhood preservation because it loosens existing standards. Wiess urged Council to reject this proposal and instead require a measure with more restrictions.

Public hearing closed at 7:34 p.m.

Councilmember Whittum stated he would like to hear the outcome of the city attorney's conversation with the City of Santa Clara regarding their ordinance before proceeding.

MOTION: Councilmember Whittum moved to table this item until the city attorney can report back with an analysis of the City of Santa Clara's ordinance regarding this matter.

Motion died for lack of second.

Councilmember Chu inquired whether large passenger vehicles exceed 10,000 pounds and Director Johnson responded that large passenger vehicles are not typically licensed as commercial vehicles; however, they do weigh close to 10,000 pounds.

MOTION: Councilmember Whittum moved that Council take no action on this item.

Motion failed for lack of second.

MOTION: Vice Mayor Moylan moved and Councilmember Swegles seconded to approve Alternative A: Initiate an ordinance to amend Title 10 (Vehicles and Traffic) and Title 19 (Zoning) of the Municipal Code to incorporate the 10,000 pound weight limitation for parking purposed in all applicable sections.

Vice Mayor Moylan stated he agrees a more aggressive enforcement will be needed in the future; however, that type of enforcement will create a massive expense. Vice Mayor Moylan stated it is not the expense that would deter him from passing further enforcement; rather it is the fact that the street is a public right of way. Homeowners do not own the street in front of their house. Vice Mayor Moylan stated this is a bigger issue than the issue of commercial vehicles; however, it appears that public sentiment is in favor of the notion that they own the street in front of their house so for now, he will concede to what staff has stated can be done.

Councilmember Whittum stated the issue is esthetics in neighborhoods and the legal analysis has not been completed so it is unclear what can actually be done at the moment. Councilmember Whittum stated passage of this motion will make things worse by allowing higher gross weight vehicles. Councilmember Whittum stated the driving force behind this study issue has not been addressed, which involved neighborhood esthetics and the proliferation of commercial vehicle signage. Local city ordinances should be reviewed in order to address this study issue properly.

Councilmember Chu stated he would like to amend the ordinance to state "no greater than 10,000 pound weight limit and no greater capacity than ½ ton."

Mayor Spitaleri clarified with Director Hom that the vehicles being addressed as commercial are those listed in the vehicle code. Staff's recommendation is to make a consistent 10,000 pound weight limit to match the zoning code and state definition.

Councilmember Chu stated it is confusing as to how much vehicles weigh and he is trying to clarify the description. Following clarification, Councilmember Chu withdrew his request for an amendment.

VOTE: 6-1 (Councilmember Whittum dissented)

3. RTC 09-312 Palo Alto Medical Foundation Project Traffic Issues – Request for Action on Road Improvements

Director of Public Works Marvin Rose provided the staff report.

Vice Mayor Moylan questioned if the left turn was completed, would that mitigate the need for traffic calming on Olive Avenue or does staff believe traffic calming measures should proceed as the traffic will still be impacted? Director Rose stated the study indicated that the left turn would be operationally beneficial and actually took traffic off Olive. Staff did not feel traffic calming measures for Olive would be necessary.

Public hearing opened at 7:48 p.m.

Josh Martin stated additional traffic calming is needed on Olive Avenue presently and with the addition of the medical facility the need for calming measures will be even greater. Martin requested Council consider their vote as if they lived in the area, on Carol or Bayview, with the increase in traffic. Martin stated he supports the left hand turn from Sunnyvale onto Old San Francisco Road as it will alleviate many of the traffic issues associated with opening a new medical facility. Martin stated he supports traffic calming mitigation efforts as necessary.

Councilmember Whittum inquired whether Martin agrees with the staff recommendation to focus on the left hand turn currently, and then to look at traffic calming measures afterwards. Martin stated his concern is that if the left hand turn is approved, the City will then decide that additional traffic mitigation is not needed. Martin stated additional traffic mitigation is needed currently.

Councilmember Swegles verified with Director Rose that staff is recommending to defer traffic calming measures until after the left hand turn is implemented. Director Rose stated if there are items that should be done as the left hand turn is constructed, staff will implement those measures; however, staff will need to consider the neighborhood's input as to what they view to be traffic issues.

Ken Rheume thanked staff for reviewing the left hand turn option. Rheume stated until the left hand turn is approved, it is difficult to identify and move forward with traffic calming measures. Rheume requested Council look at all options including street closures if necessary.

Tynna Jones stated she is in favor of closing Carol, Central and Bayview streets. Jones stated the concern is that the medical facility will have two parking structures which allow for entering and exiting from the structure onto Bayview. Jones stated during a community meeting with staff, street closures were not addressed; therefore, the consensus was that the City was not considering any closures. Jones stated that the neighborhood circulated petitions and received 72 signatures supporting street closures.

Jeff Jones stated the neighborhood requested to assist staff with the survey that was circulated through the neighborhood; however, staff did not accept any assistance and subsequently the survey had many errors. Jones stated staff asserted on page 2 of the staff report that 62 surveys were returned; however, Attachment C states only 44 surveys were returned. Jones stated he is disappointed with the staff report. Jones stated the

neighborhood has consensus regarding street closures. Jones stated he approves of Alternative 2, which would direct staff to pursue a plan.

Councilmember Whittum questioned whether Jones supports waiting to approve street closures until the traffic impact of the left turn can be determined. Jones stated street closures need to remain as an option. Jones suggested staff perform a traffic count in order to see how the traffic has grown over the years.

Michael Weseloh stated he forwarded a letter to the traffic division earlier in the week and read a copy of his letter to Council regarding Central Avenue. Weseloh stated he supports closing Central Avenue to through traffic and cited the reasons.

Gustav Larsson thanked staff for reviewing the left hand turn. Larsson cited reasons why approval of the left hand turn would be beneficial. Larsson urged Council not to read too much into the survey because the questions were broad. Larsson stated he supports the staff recommendation and explained that delaying a decision on traffic calming until after the left hand turn is installed will allow for a better basis of what needs to be done.

Arthur Schwartz stated he is concerned over the City's survey. Schwartz stated he found the survey results hard to follow. Schwartz stated he was bothered by the fact that the neighborhood had presented its own survey; however, it was not allowed to be part of the official documentation of the community meeting because it was done by the citizens themselves.

Charles Keeler stated he has concerns over street closures because closing one street puts pressure on other streets. Keeler stated he is opposed to any further street closures.

Public hearing closed at 8:11 p.m.

Councilmember Whittum questioned staff on the difference between Alternatives 2 and 4. Director Rose responded that in general staff will make recommendations to defer decisions when Council is looking at budgetary items so they can be weighed during the budget process against all budgetary items.

Councilmember Whittum questioned whether the project for a left turn on southbound Sunnyvale is in the Redevelopment Area (RDA) of the City and if so, would it benefit from RDA funds. Transportation and Traffic Manager Jack Witthaus responded that the boundary of the RDA runs down the center of the proposed intersection; however, a significant portion of the project limits are outside of the RDA area. Manager Witthaus explained there is previous case law in which agencies have pursued RDA funds for projects which might benefit a RDA area, and were right on a boundary; however, those projects were not found to be eligible for RDA funds. Additionally, there are some significant financial questions about the availability of RDA funds for this project.

Councilmember Whittum stated was aware that during recent years, the RDA had spent funds on signage, which was not all in the RDA area. Councilmember Whittum stated he will bring up this issue later during the RDA hearing.

Councilmember Swegles inquired why the neighborhood survey was pulled from the report and Director Rose responded that the city in general redacts signature information when contained in a report. Director Rose stated staff did not ignore the survey and that is why it was contained in the staff report. Director Rose stated staff also issued a survey in order to obtain as much information as possible.

Councilmember Swegles clarified with Director Rose that the signal at the intersection of El Camino and Sunnyvale will need to be replaced per Caltrans.

MOTION: Councilmember Chu moved and Councilmember Whittum seconded to direct staff to design a project now, which would construct the left turn from southbound Sunnyvale Avenue to eastbound Old San Francisco Road, and to direct staff to include the project for implementation to construct the left hand turn in the proposed FY 2010/2011 budget, and direct staff to design and implement traffic calming on Olive Avenue between Old San Francisco and Central Avenue.

Councilmember Chu stated it was originally his idea to put in a left hand turn lane and he is glad that the analysis shows it can be done. Councilmember Chu stated there will be additional traffic on Olive and starting to work on that concern should be done now.

Mayor Spitaleri clarified with Councilmember Chu that his motion allows for starting the design of the project now; however, the actual cost of construction would be part of 2010/2011 budget process.

Vice Mayor Moylan stated the motion on the floor is similar to Alternative 2 and he would prefer Alternative 2 because it would start the project now. Vice Mayor Moylan explained the sense of urgency due to the truancy problem at Fremont High from the long bus ride to school for some students. Currently, the bus ride for the students coming from the north takes an hour and a half. Vice Mayor Moylan stated anything that will facilitate shortening that bus ride for the students, he would support. Vice Mayor Moylan stated he also would like to see evidence that the traffic problem will get worse on Olive Street and not just react from fear that it will get worse. Vice Mayor Moylan stated he cannot support the motion, but would support the motion if it was just to approve Alternative 2.

Councilmember Hamilton verified with Director Rose that no funding has been identified for this project. Councilmember Hamilton stated she would defer this item to the budget process as she would need to look at this item in the context of the entire budget. Councilmember Hamilton stated this project has merit but prior to instituting traffic calming, she would want to see proof that it was needed. Councilmember Hamilton stated her main concern is that she does not approve of spot budgeting and therefore, she will oppose the motion.

Councilmember Whittum stated he found the funding for this project from account 827700 in the budget. Account 827700 has funds of \$738,000 for electronic records management; however, this project does not seem to be that important since no work has been done on it for the past 18 months.

Councilmember Whittum stated the Palo Alto Medical Facility has been approved and this project is needed for the facility and also for the downtown area. Councilmember Whittum agreed that the amount of funds needed for this project is large; however, the project is needed. Councilmember Whittum stated he could go either way in regard to the traffic calming.

Councilmember Swegles clarified with Councilmember Chu that his motion is to start designing the project now and review the financing portion for the construction of the project as a budget item within the budget process. Councilmember Chu suggested funds needed to design the project could come from the surplus in Sunnyvale Works projects.

Councilmember Swegles verified with Director Rose that staff anticipates the cost of designing the project will be approximately \$125,000. Director Rose stated before staff started the design process, they would need to go before Caltrans for approval as it is a Caltrans traffic signal.

Councilmember Swegles stated he didn't think traffic calming on Olive was a priority.

FORMAL AMENDMENT: Councilmember Chu moved and Councilmember Whittum seconded to amend the main motion and remove the traffic calming on Olive Avenue between Sunnyvale Avenue and Central Avenue for consideration as a separate motion.

Vice Mayor Moylan clarified with Councilmember Chu that the difference between Alternative 2 and this motion is that only the design phase will be funded and the cost of the rest of the project will be part of the FY 2010/2011 budget process.

Director Rose clarified that the first step would be to take report to Caltrans and proceed with the design after that.

Councilmember Hamilton verified with Director Rose that it will be difficult to tell how long the Caltrans project will take but it could be from three months to a year.

Councilmember Hamilton stated she would prefer to wait and have the entire item ranked during the budget process.

VOTE on FORMAL AMENDMENT: 6-1 (Councilmember Hamilton dissented)

Councilmember Hamilton stated she misunderstood the motion and requested the motion be reconsidered.

PROCEDURAL MOTION: Councilmember Howe moved and Councilmember Chu seconded the motion to reconsider the previous action.

VOTE: 7-0

RECONSIDERATION of FORMAL AMENDMENT: Reconsideration of motion to split the initial motion and consider traffic calming on Olive Avenue between Sunnyvale Avenue and Central Avenue as a separate motion.

VOTE on FORMAL AMENDMENT: 7-0

MAIN MOTION as AMENDED: Direct staff to design a project to construct the left turn from southbound Sunnyvale Avenue to eastbound Old San Francisco Road now, and direct staff to include the project for implementation to construct the left hand turn in the proposed FY 2010/2011 budget.

VOTE on MAIN MOTION: 6–1 (Councilmember Hamilton dissented)

MOTION: Councilmember Chu moved and Councilmember Howe seconded the motion to design and implement traffic calming on Olive Avenue between Old San Francisco Road and Central Avenue.

VOTE: 2-5 (Councilmembers Whittum, Swegles, Moylan, Spitaleri, Hamilton dissented)
MOTION FAILED.

Councilmember Whittum raised issue of whether to consider in the budget process removal cancellation of Project 827700 to save \$730,000.

4. RTC 09-303 Consider Agreement with Santa Clara County for Operation of Baylands Park and Consider Recreational Enhancements at Baylands Park (Study Issue)

Director of Community Services David Lewis provided the staff report.

Councilmember Swegles stated he recently learned Sunnyvale once owned the property and the Council at the time gave it to the county. He stated he did not know whether the City received any funds for the transfer, but expressed concern the City is maintaining the park again. Swegles inquired as to the possibility the county might like to give the park back to the City. Director Lewis responded the ownership issue was discussed and the county would like to maintain ownership of the property.

Councilmember Whittum expressed concern regarding the approximately \$420,000 a year the City will spend on upkeep. He stated this is money which would not be spent on other parks. He stated one option with Baylands is to return a portion of it to a natural state, rather than replacing facilities as they deteriorate. He inquired whether this could be considered by providing for an opt-out option every two years, or within two years notice with this agreement. Director Lewis responded the agreement indicates the City will maintain the park to the City's basic park maintenance standards. Lewis indicated 105 of the 177 acres are in a natural state, with only 72 acres developed.

Councilmember Whittum stated while the \$420,000 is in the budget yearly, the City may have to sell some park land and make financial decisions about upkeep of neighborhood parks. He suggested a possible alternative is to allow the developed acreage to gradually restore itself to a more natural state. He inquired as to whether this could be done two years from now, and whether that means the City would have to opt out of this agreement. Councilmember Whittum asked whether this contract would allow the City to cut back on expenses if needed two years from now. Director Lewis responded the agreement requires the park be maintained as it was designed and constructed to the City's park maintenance standards. Lewis stated the picnic and trail areas are extremely heavily used by thousands of people recreationally. He stated it is included as a City of Sunnyvale park in the park system and included in all of the park acreage calculations and park acreage ratios.

Public Hearing opened at 8:56 p.m.

Robert Pochowski, Parks and Recreation Commissioner presented the commission's findings on the staff report. He stated at the time the report was before the commission, the pest management stipulation was that the Sunnyvale management policy would be used, not the county's. Pochowski stated the commission voted to recommend approval of the agreement with the county. He stated in addition, the commission recommends prioritization of capital improvements to continue to maintain the park for safety, irrigation, and other park improvements. He stated the commission understands the irrigation system is obsolete and would like Council to be aware there may be some expenditures required in the near future to maintain the park at the current level.

Public hearing closed at 8:58 p.m.

MOTION: Councilmember Hamilton moved and Vice Mayor Moylan seconded the motion to approve Alternative No. 1: Council approves the Lease Agreement with Santa Clara County for operating Sunnyvale Baylands Park, conditioned on County's approval of the Lease Agreement, including a 5-year exemption from the County's Integrated Pest Management Ordinance and authorizes the City Manager to sign the lease on behalf of the City.

VOTE: 6-1 (Councilmember Swegles dissented)

5. RTC 09-314 FY 2008/2009 Budgetary Year-End Financial Report, Comprehensive Annual Financial Report, and Redevelopment Agency Financial Report

Finance Director Mary Bradley provided the staff report.

Vice Mayor Moylan suggested as a procedural matter in future the report be presented as an information only item.

Councilmember Chu confirmed with Director Bradley that projected property taxes overall are forecast to be negative. He questioned whether between residential and commercial, residential is expected to be negative overall. Director Bradley responded for FY 2010/2011, about 2.25 % increase was projected, which included a 2 % CPI increase and a quarter of a percent increase in assessed value. She stated it is now clear we won't have the 2 % CPI, and the CPI would be negative, or about zero. Bradley stated it is thought residential will continue to be stronger and it doesn't appear the big wave on commercial appeals on assessments will continue.

Councilmember Chu confirmed with Director Bradley the assessor automatically reassessed a huge percentage of residential properties. Director Bradley added as a point of reference there is an appeal on a commercial property in Sunnyvale that is appealing assessed valuation by \$250 million, which equates to half a million annually to the City.

Councilmember Chu stated the City's CAFR has received awards. Director Bradley confirmed the City has received the Government Finance Officers' Association Certificate of Achievement for Excellence in Financial Reporting for the twentieth year.

Councilmember Whittum stated it is an interesting point that the 2008/2009 budget stabilization fund ended at \$39.4 million; it is projected to end at \$ 35.2 million at the close of 2009/2010 and \$28 million at the close of 2010/2011. He stated two other interesting points are with regard to the summary on Fund 35; there were unexpended funds of \$300,000 for the Peery Park and \$730,000 for Electronic Records Management.

Public Hearing opened at 9:08 p.m.

Speakers: none

Public hearing closed at 9:08 p.m.

MOTION: Councilmember Swegles moved and Councilmember Chu seconded the motion to receive and file the budgetary Year-end Financial Report, the audited Comprehensive Annual Financial Report, the Memorandum on Internal Control and Required Communications issued by the independent auditors, and the Redevelopment Agency Financial Report.

VOTE: 7-0

6. RTC 09-315 Bylaws for all Boards and Commissions (Revisions to Council Policy 7.2.19 Sections 1 and 2.A. - I.) and Adoption of Resolution Repealing Any Existing Bylaws and Resolutions

Assistant City Manager Robert Walker provided the staff report.

Councilmember Hamilton stated there was a change relating to absences recommended by one of the commissions, but which was not incorporated into the revisions presented in the report. She stated a member of the Housing and Human Services Commission wanted to ask about maternity leave absences and questioned why it was not included in the staff recommendation. Assistant City Manager Walker clarified that much input from the boards and commissions was incorporated, but not all. He stated with this particular suggestion, staff erred on the side of taking no position on it, with consideration given to all of the work Council has put into the attendance policy over the past several years. He stated any board or commission member that wants an extended absence can appeal to the Mayor and Council and receive dispensation for that.

Councilmember Hamilton stated if somebody resigns or is in a seat that is declared vacant, the policy states on page four that a board or commission member is not eligible to serve on a different board or commission until the unexpired term for which he/she has resigned or removed has expired. Councilmember Hamilton questioned whether and how many times that has been an issue. Assistant City Manager Walker responded that he could not recall any time when it has been an issue.

Councilmember Hamilton, requested clarification with regard to the duties and responsibilities of the Housing and Human Services Commission, listed on page 12 where the policy states: "the commission shall not be formally involved in issues pertaining directly to current or future Human Services programs which are directly provided by, co-sponsored by, or relate directly (in the case of outside funding) to programs provided by City

departments for which the Council has established an advisory board or commission unless dual responsibility therefore is explicitly authorized by a City Council-approved Agenda Calendar or work plan.” Assistant City Manager Walker provided historical background relating to the establishment of the Housing and Human Services Commission and the potential for confusion with its broad, vague title. He stated other commissions such as Parks and Recreation were specifically charged with matters which might be considered human services and co-sponsorships. The Council’s charge was that if a specific commission was specifically charged with co-sponsorships of Little Leagues or arts groups, the Housing and Human Services Commission was not intended to be involved.

Councilmember Whittum raised a procedural question regarding adoption of a specific section of the Council Policy Manual. Assistant City Manager Walker confirmed the Council approves changes to the Council Policy Manual.

Councilmember Whittum confirmed with staff the use of the language on page 9 which reads “50% plus 1” and replaces “51%” is intended to provide that boards and commissions have a quorum when a majority of their current membership is present. Councilmember Whittum suggested the use of the word “majority” would be more clear.

Councilmember Whittum questioned where the language in the old policy providing for the Arts Commission to review the budget is in the revised policy. Assistant City Manager Walker responded the language is at the top of page 10 and is more specific than what was contained in the other document.

Councilmember Chu commented on the Housing and Human Services Commission discussion reported in their minutes regarding reducing the membership to five or seven. Councilmember Chu expressed a preference for the larger number due to the number of non-profits that are reviewed and the division of the workload.

Councilmember Swegles stated he thought that when the Parks and Recreation Commission were the only ones looking at the budget, they were supposed to turn in their perspective prior to approval by the Council. He stated he didn’t think the commission ever made that guideline and asked whether that was a charter issue at the time. Assistant City Manager Walker responded that it was the intent of the city manager at that time, as well as the current city manager’s intent that all City boards and commissions look at the budget. He stated that language was clarified and is consistent with this version.

Public Hearing opened at 9:22 p.m.

Robert Pochowski, Parks and Recreation Commissioner reported the commission reviewed the item and recommends approval of the changes with two additions. He stated both recommendations are about the attendance policy. The first one deals with the situation where a member is on a commission for four years and in some cases a commissioner is attending school, taking night classes, and there may be conflicts between regular meeting dates. He stated the commission requests addition of a provision to section 2.H.(I) Meetings to allow the commission to select a different meeting date and time within a week of the regularly scheduled meeting date, provided the changed date will maximize attendance of commissioners and staff. The second recommendation of the commission relates to potential medical issues under the attendance section. He stated the commission requests a provision under section 2.H.(II). to allow a commissioner to be excused from missing up to

four consecutive meetings with the prior approval of the Mayor and/or the Council.

Councilmember Swegles questioned whether the commission's request is on a case by case basis. Mr. Pochowski confirmed. Assistant City Manager Walker provided additional information regarding the boards and commissions' ability to conduct special meetings as long as they are properly noticed.

Mayor Spitaleri questioned how the attendance policy fares with the Family Medical Leave Act.

City Attorney Kahn responded the Family Medical Leave Act would not apply to commissioners, boardmembers or Council as they are not considered to be employees under the FMLA.

Fred Fowler requested the addition of six words on page 7, section 2.G.(II). Under "Chair's Role and Responsibilities," paragraph (e) on setting the agendas of commission meetings, add the following text to the end of the sentence: "subject to appeal to the City Council."

Kevin Jackson, Chair of the Bicycle and Pedestrian Advisory Commission stated the commission's concern is the restricting of the scope of the commission's activities to policy issues, which it feels will greatly reduce its effectiveness to the detriment of non-motorists' safety and the success of alternative transportation initiatives. He stated BPAC commissioners provide critical experience that would otherwise be virtually non-existent in the process of designing, building, and maintaining facilities. He stated the commission maintains a list of 25 active items which it reviews and monitors monthly, almost none of which are policy-related. Chair Jackson stated the BPAC requests two changes to the staff recommendation as reflected in the minutes. The first is to revise item 1.B on page 1, relating to administrative or operational matters. The second similar change is on page 10, item I.(I)(d) Operational Issues which reads: "Board and commissions may serve as advisory bodies to staff regarding operational issues upon request by staff." He stated the commission requests the last phrase be stricken.

Vice Mayor Moylan stated commissions are advisory to the Council, which is precluded from involving itself in operational issues. He explained this presents difficulty in accommodating the suggestion to empower the Council's advisors to be involved in operational issues when the Council is not.

Patrick Walz spoke as a former member of the Board of Building Code Appeals which never met during his term. He stated the more experts that review a design, the better the result, and furthermore, the board will soon have authority to review Green Building appeals. He suggested the board should not be reduced at this time, and to give it at least a year to see if the Green Building Standards result in additional appeals. Mr. Walz suggested other alternatives would be to fill vacancies such as lifting the residency requirement for this board, or temporarily committing existing commissioners on other boards to serve on two commissions until it becomes apparent that is not sustainable.

Councilmember Swegles stated the board has not had five members on that board for quite awhile and discussed the merits of reducing the board to three until there is more interest due to the Green Building codes.

Councilmember Hamilton confirmed with Patrick Walz he served on the board. Mr. Walz confirmed he served from 2005 to 2008 and that he served until his term expired.

Councilmember Chu confirmed with Mr. Walz the Board of Building Code Appeals never met during the four years he was on the board, and asked if he knew that he was precluded from applying for another more active commission. Mr. Walz confirmed he knew this, and waited until 2008 when his term expired before applying for BPAC. Councilmember Chu asked whether Mr. Walz felt restricted in the fact that he couldn't make a change in that four years. Mr. Walz responded that he would say that is correct. Councilmember Chu commented there are others like him who would like to be on the BBCA but while they're waiting for another commission to open up, he'd rather have somebody active than somebody not volunteering because they're waiting for the other more active commission to open up.

Mayor Spitaleri asked the City Attorney if the charter dictates how many commissions a member can serve on. City Attorney Kahn responded the charter provides that a person is eligible generally for one board or commission at a time, that you become immediately eligible for appointment to another board or commission when the term is expired. The charter was amended in 2007 to allow resignation and immediate appointment to a different board or commission even prior to expiration of the full term on the original board or commission.

Jim Griffith, former Chair of the Board of Library Trustees, speaking for himself stated a membership of seven is the right number for the Housing and Human Services Commission. He stated he agrees with Patrick Walz to keep the Board of Building Code Appeals at five, at least until we can see what is going to happen with the Green Building Standards. Mr. Griffith commented on the earlier suggestion of changing meeting times and stated he recalls certain commissions are dictated by the charter as to when they can meet, such as the Library Board. He stated it would be helpful to clarify if boards have the ability to schedule a special meeting in this process.

Public hearing closed at 9:46p.m.

Vice Mayor Moylan inquired as to where in the charter serving on two different commissions simultaneously is precluded, whereas the prohibition is in the policy, attachment A, page 3. City Attorney Kahn responded that in his recollection, the discussion of the charter review committee was that service was limited to one committee at any given time. He stated that the third paragraph under Charter Section 1002, states: "Any person appointed to a board or commission shall be immediately eligible, upon the expiration of their term or resignation to be appointed to a different board or commission." He stated this could be interpreted that a person cannot be on a different board or commission without resigning or having the term expire. Vice Mayor Moylan stated he would interpret it that you are immediately eligible once off one to get on another.

Councilmember Chu requested clarification of the charter section that allows a member to move from one commission to another commission by resigning without having to wait until the term expires. He stated the policy, page 4, sub-paragraph (V) does not state that, but indicates that a member of the commission, even if they resign, cannot apply for another commission until the expiration of the first term. Assistant City Manager Walker confirmed the error and stated staff did not update this language following the charter revision, and

stated this would be updated.

MAIN MOTION: Councilmember Hamilton moved to approve Alternatives 2 and 6: Approve revisions to Council Policy 7.2.19 *with changes* to Attachment A to this report to incorporate bylaws for all boards and commissions, and adopt Resolution No. XXX-09, with the changes as follows:

1. Clean up language just mentioned by Assistant City Manager Walker;
2. Request from one speaker to add the Chair can appeal to the Council if there is a dispute over the agenda by adding the words: "subject to appeal to the City Council" to the end of paragraph 2.(e);
3. Page 9, under absences, to allow three months of maternity or paternity leave for board or commission members;

Alternative 6: Reduce the number of members of the Housing and Human Services Commission to seven.

Councilmember Chu seconded the motion with a friendly amendment, to make the last change discussed, to remove the limitation from going to another commission within a four-year period. Councilmember Hamilton accepted the friendly amendment.

City Attorney Kahn stated no motion would be necessary on this point as it is inconsistent with the charter and will have to be changed.

Councilmember Hamilton requested clarification whether a board or commission member can not apply for a different board or commission until they resign from the one they are on. Assistant City Manager Walker responded it was determined that one could apply, but would have to resign if appointed.

Councilmember Hamilton commented on her motion, stating it is a good document and extended appreciation to all of the boards and commissions which reviewed it.

Councilmember Whittum stated he would oppose the motion as he thinks this kind of work is better done and finalized by a Council subcommittee. He stated there were a number of good suggestions, some of which bear further looking into.

Vice Mayor Moylan stated he would oppose the motion for several reasons; he could not support taking three months off for family leave as a commission shouldn't be handicapped by absences. He stated he is also not persuaded by the Parks and Recreation Commission argument that members should be allowed to miss four meetings in a row. Vice Mayor Moylan stated he could go for council subcommittee to work through the list of other suggestions.

Councilmember Hamilton stated the reason she included maternity leave is because a current and the most experienced member of one commission is pregnant and will have to resign. She stated she did not see the point in losing somebody who is an extremely valuable contributor to a board or commission because that person is making a decision that is going to materially affect their life.

Councilmember Whittum moved to table the motion and remand the matter to a Council subcommittee. Following brief discussion regarding procedure, Councilmember Whittum stated he would withdraw the motion and wait for the vote.

City Attorney Kahn stated that a motion to postpone or table requires a second, and if seconded, it tables the motion.

Mayor Spitaleri stated his concern is that a vote on this motion which includes maternity leave will be retroactive.

Councilmember Hamilton stated that the alternative is the person could come to the Council and ask for the time off, and she doesn't think people will do that.

VOTE: 3-4 (Councilmembers Whittum, Swegles, Moylan, Spitaleri dissented)
MOTION FAILED.

MOTION: Councilmember Moylan moved and Councilmember Swegles seconded the motion to approve Alternatives 2 and 6: Approve revisions to Council Policy 7.2.19 *with changes* to Attachment A to this report to incorporate bylaws for all boards and commissions, and adopt Resolution No. XXX-09, with changes as follows:

1. Page 3: Revise the concurrent service statement to create an exception for the Board of Building Code Appeals;
2. Page 4: Fix the eligibility statement to be consistent with the charter;
3. Page 7: To include the request from the Housing and Human Services Commission to add "subject to appeal to the City Council"
4. Page 9: Replace the "50% plus one" with the word "majority";
5. Add Section Q at end: "Boards and commissions may craft additional bylaw provisions specific to themselves as long as they do not conflict with Sections A through P above"

Alternative 6: Reduce the number of members of the Housing and Human Services Commission to seven.

FRIENDLY AMENDMENT: Councilmember Chu offered a friendly amendment with regard to Section Q, that it be changed to say that Council has to approve the change, rather than the commission. Vice Mayor Moylan accepted the friendly amendment.

VOTE 6-1 (Councilmember Whittum dissented)

COUNCILMEMBER REPORTS ON ACTIVITIES FROM INTERGOVERNMENTAL COMMITTEE ASSIGNMENTS

Vice Mayor Moylan provided a report on the results of the VTA election among the North cities for the three VTA Board members and the alternate. Only four cities nominated council members: Sunnyvale nominated himself, Mountain View nominated Margaret Abe-Koga the current Chair of the Policy Advisory Committee, Los Altos Hills nominated Rich Larsen, Santa Clara nominated Jamie Matthews. He stated the nominee from Santa Clara was mistakenly stated last time to be Jamie McLeod. Vice Mayor Moylan reported discussion centered strongly on the governance issue which Santa Clara had supported and which the other five cities are opposed. Everyone got a first-choice, second-choice and third-choice vote, weighted accordingly. Vice Mayor Moylan stated he received the most votes; Margaret Abe-Koga received the second most votes; Rich Larsen received the third-most votes; Jamie Matthews is the alternate. Vice Mayor Moylan will be on the VTA Board for the next two years.

NON-AGENDA ITEMS & COMMENTS

COUNCIL: None.

STAFF: None

INFORMATION ONLY REPORTS/ITEMS

- Tentative Council Meeting Agenda Calendar
- Draft 2010 Tentative Council Meeting Agenda Calendar
- Draft Minutes of the Board of Library Trustees Meeting of December 7, 2009
- Draft Minutes of the Bicycle and Pedestrian Advisory Commission Meeting of November 19, 2009
- Draft Minutes of the Housing and Human Services Commission Meeting of November 18, 2009
- Study Session Summary of December 8, 2009 – Economic Development Update

ADJOURNMENT TO THE REDEVELOPMENT AGENCY

Mayor Spitaleri adjourned the Council meeting at 10:09 p.m. and immediately convened the Sunnyvale Redevelopment Agency Meeting.

Kathleen Franco Simmons
City Clerk

Date